



Virginia
Regulatory
Town Hall

Emergency Regulation Agency Background Document

Agency Name:	Department of Criminal Justice Services
VAC Chapter Number:	6 VAC 20-210-10 et seq.
Regulation Title:	Regulations for the Implementation of the Law Permitting DNA Analysis Upon Arrest for All Violent Felonies and Certain Burglaries
Action Title:	Arrestee DNA Analysis Regulations
Date:	01/07/03

Section 9-6.14:4.1(C)(5) of the Administrative Process Act allows for the adoption of emergency regulations. Please refer to the APA, Executive Order Twenty-Four (98), and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the emergency regulation submission package.

Emergency Preamble

Please provide a statement that the emergency regulation is necessary and provide detail of the nature of the emergency. Section 9-6.14:4.1(C)(5) of the Administrative Process Act states that an "emergency situation" means: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. The statement should also identify that the regulation is not otherwise exempt under the provisions of § 9-6.14:4.1(C)(4).

Please include a brief summary of the emergency action. There is no need to state each provision or amendment.

This emergency regulation is necessary because without it an imminent threat to public safety would exist. Virginia Code §§ 19.2-310.2:1 and 19.2-310.3:1 require the Department of Criminal Justice Services, Division of Forensic Science, to adopt regulations for their implementation. These regulations are in the process of being promulgated under the Administrative Process Act; however, in the interim, an emergency regulation must be adopted to provide instruction as to when a sample may be collected, how the samples will be collected, and who is responsible for collecting the samples. Without this emergency regulation, the law

will not be properly implemented and many samples required to be collected from arrested persons will not be collected, the DNA profiles from these arrested persons will not be searched against the DNA Data Bank, and these individuals will be released from custody without having been linked to unsolved crimes. Thus, public safety will be directly and imminently threatened without promulgation of this emergency regulation.

Basis

Please identify the state and/or federal source of legal authority to promulgate the emergency regulation. The discussion of this emergency statutory authority should: 1) describe its scope; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. Full citations of legal authority and web site addresses, if available for locating the text of the cited authority, should be provided.

Please provide a statement that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.

§ 9.1-102 of the Code of Virginia authorizes the Criminal Justice Services Board to adopt regulations for “any provisions of the Code as they relate to the responsibilities of the Division of Forensic Science.” § 2.2-4011(A.) (i.) of the Code of Virginia provides the authority to adopt emergency regulations.

Substance

Please detail any changes, other than strictly editorial changes, that would be implemented. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Please provide a cross-walk which includes citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of Virginians. The statement should also delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

This is a new regulation established to implement Virginia Code §§ 19.2-310.2:1 and 19.2-310.3:1 effective January 1, 2003 on an emergency basis until a permanent regulation is adopted in accordance with the Administrative Process Act.

Alternatives

Please describe the specific alternatives that were considered and the rationale used by the agency to select the least burdensome or intrusive method to meet the essential purpose of the action.

The Department of Criminal Justice Services Division of Forensic Science is the authorized agency that conducts DNA analysis in Virginia. There are no alternatives available to meet the essential purpose of this regulation.

Family Impact Statement

The taking of a biological sample for DNA analysis does not have a family impact.